

Subpart 208.74—Enterprise Software Agreements

SOURCE: 67 FR 65511, Oct. 25, 2002, unless otherwise noted.

208.7400 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of commercial software and software maintenance, including software and software maintenance that is acquired—

- (a) As part of a system or system upgrade, where practicable;
- (b) Under a service contract;
- (c) Under a contract or agreement administered by another agency (*e.g.*, under an interagency agreement);
- (d) Under a Federal Supply Schedule contract or blanket purchase agreement established in accordance with FAR 8.404(b)(4); or
- (e) By a contractor that is authorized to order From a Government supply source pursuant to FAR 51.101.

208.7401 Definitions.

As used in this subpart—

Enterprise software agreement means an agreement or a contract that is used to acquire designated commercial software or related services such as software maintenance.

Enterprise Software Initiative means an initiative led by the DoD Chief Information Officer to develop processes for DoD-wide software asset management.

Software maintenance means services normally provided by a software company as standard services at established catalog or market prices, *e.g.*, the right to receive and use upgraded versions of software, updates, and revisions.

[67 FR 65511, Oct. 25, 2002, as amended at 71 FR 39005, July 11, 2006]

208.7402 General.

Departments and agencies shall fulfill requirements for commercial software and related services, such as software maintenance, in accordance with the DoD Enterprise Software Initiative (ESI) (see Web site at <http://www.don-imit.navy.mil/esi>). ESI promotes the use of enterprise software agreements (ESAs) with contractors that allow DoD to obtain favorable terms and

pricing for commercial software and related services. ESI does not dictate the products or services to be acquired.

208.7403 Acquisition procedures.

Follow the procedures at PGI 208.7403 when acquiring commercial software and related services.

[71 FR 39005, July 11, 2006]

PART 209—CONTRACTOR QUALIFICATIONS

Subpart 209.1—Responsible Prospective Contractors

Sec.

- 209.101 Definitions.
- 209.104 Standards.
- 209.104-1 General standards.
- 209.104-4 Subcontractor responsibility.
- 209.104-70 Solicitation provisions.
- 209.105-1 Obtaining information.
- 209.105-2 Determinations and documentation.
- 209.106 Preaward surveys.

Subpart 209.2—Qualifications Requirements

- 209.202 Policy.
- 209.270 Aviation critical safety items.
- 209.270-1 Scope.
- 209.270-2 Definitions.
- 209.270-3 Policy.
- 209.270-4 Procedures.

Subpart 209.3 [Reserved]

Subpart 209.4—Debarment, Suspension, and Ineligibility

- 209.402 Policy.
- 209.403 Definitions.
- 209.405 Effect of listing.
- 209.405-1 Continuation of current contracts.
- 209.405-2 Restrictions on subcontracting.
- 209.406 Debarment.
- 209.406-1 General.
- 209.406-2 Causes for debarment.
- 209.406-3 Procedures.
- 209.407 Suspension.
- 209.407-3 Procedures.
- 209.409 Solicitation provision and contract clause.
- 209.470 Reserve Officer Training Corps and military recruiting on campus.
- 209.470-1 Definition.
- 209.470-2 Policy.
- 209.470-3 Procedures.
- 209.470-4 Contract clause.
- 209.471 Congressional Medal of Honor.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36313, July 31, 1991, unless otherwise noted.

Subpart 209.1—Responsible Prospective Contractors

209.101 Definitions.

“Entity controlled by a foreign government,” “foreign government,” and “proscribed information,” are defined in the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

[59 FR 51132, Oct. 7, 1994]

209.104 Standards.

209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor’s accounting system and related internal controls must provide reasonable assurance that—

- (i) Applicable laws and regulations are complied with;
- (ii) The accounting system and cost data are reliable;
- (iii) Risk of misallocations and mischarges are minimized; and
- (iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a terrorist country.* (A) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract of \$100,000 or more to a firm or to a subsidiary of a firm when a foreign government—

(1) Either directly or indirectly, has a significant interest—

- (i) In the firm; or
- (ii) In the subsidiary or the firm that owns the subsidiary; and

(2) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(B) The Secretary of Defense may waive the prohibition in paragraph (g)(i)(A) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

(ii) *Ownership or control by a foreign government when access to proscribed information is required to perform the con-*

tract. (A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(B) Whenever the contracting officer has a question about application of the provision at 252.209-7002, the contracting officer may seek advice from the Director, Defense Security Programs, Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence.

(C) In accordance with 10 U.S.C. 2536(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interest of the United States. The Secretary has delegated authority to grant this waiver to the Assistant Secretary of Defense Command, Control, Communications and Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

(1) Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

(2) General description of the acquisition and performance requirements;

(3) Identification of the national security interests involved and the ways award of the contract helps advance those interests;

(4) The availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(5) A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.